

6/2/06



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,467	10/17/2003	Sidney Gibson	34650.2	3050
32300	7590	06/07/2006	EXAMINER	
BRIGGS AND MORGAN P.A. 2200 IDS CENTER 80 SOUTH 8TH ST MINNEAPOLIS, MN 55402			YIP, WINNIE S	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**SUPPLEMENTAL**  
**Office Action Summary**

Application No.

10/688,467

Applicant(s)

GIBSON, SIDNEY

Examiner

Winnie Yip

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This office action is in response to applicant's amendment filed on March 20, 2006.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11-15 are pending in the application.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "sector-like" renders the claims indefinite because the claims include elements not actually disclosed, thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

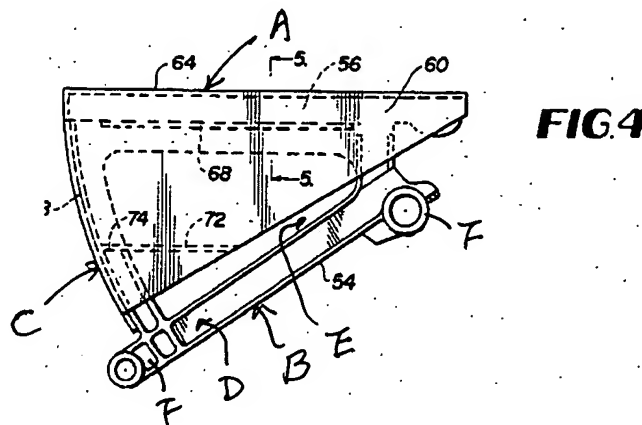
Regard to claim 14, "said surface" lacks a confusion of scope of claimed invention since the structural member that has one inclined surface is cited for intended use only. If applicant only claims "a bracket", all structural limitation of the "structural member" such as the inclined surface should only be functionally claimed.

#### ***Claim Rejections - 35 USC § 102***

3. Claims 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by White (US Patent NO.4,519,490).

Art Unit: 3636

White shows and teaches a bracket (54) used for supporting a step tread (56) on a structural member that has one inclined surface such as escalator, the bracket (54) comprising (see illustration Fig. 3): a single body (54) comprising a top section (A) having a horizontal surface including a plurality of apertures (31) for securing attachment of a tread thereon, a bottom section (B) forming an acute angle with a rear end of the top section such that the top section is substantially horizontal when the bottom section is in a flush relation with the inclined structure of the structural member, an arcuate front section (C) for supporting attachment of a curved riser (58) thereon, wherein the top section, the bottom section, and the arcuate front section forming a closed loop section, a closed-loop reinforcement web (D) disposed between and against the closed loop section, the web having at least one aperture (E), and at least one bracing member (F) having an aperture receiving a rod via a wheel for securing the bracket to the structural member.

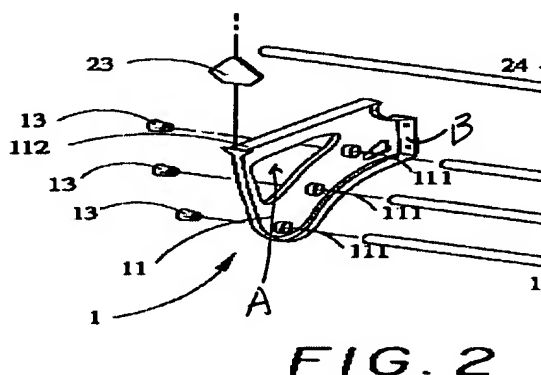


4. Claims 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Liu (US Patent No. 6,257,425).

Liu shows and teaches a bracket capably used for supporting a tread on a structural member that has one inclined surface such as a stairway, the bracket comprising: a single body

Art Unit: 3636

including a top section (112) having a horizontal surface, a bottom section forming an acute angle with a rear end of the top section such that the top section is substantially horizontal when the bottom section is substantially in a flush relation with the inclined structure of the structural member, an arcuate front section, wherein the top section, the bottom section, and the arcuate front section forming a closed loop section, a closed-loop reinforcement web (11) disposed between and against the closed loop section, the web (11) having a plurality of apertures (i.e. A, 111), and at least one bracing member (B) at the rear side for capably securing the bracket to the structural member.



***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wack et al. (Canadian Patent No. 2,354,917) in view of White '490.

Wack et al. shows and teaches a bracket used for supporting a tread (T) on a structural member that has a inclined surface such as a stair, the bracket (12 or 50) comprising: a single body (12 or 50) being made of reinforced plastic material, the body (12, 50) including a top section (22 or 62) having a horizontal surface, a bottom section (24 or 54) forming an acute angle with the top section such that the top section can be disposed substantially horizontal when the bottom section is disposed in a flush relation with the inclined structure of the structural member, a front section (18 or 58), wherein the top section, the bottom section, and the arcuate front section forming a closed loop with a closed-loop reinforcement web (30) formed therebetween, the web (30) having at least one aperture therethrough, and at least one bracing member (28 or 60 or 74) each having at least one aperture attachment for receiving a fastener such as a bolt for securing the bracket to the structural member.

Although Wack et al. do not define the front section being an arcuate front section as claimed, White '490 teaches an escalator having end brackets (54) for supporting steps, each of the bracket (54) including a top section for supporting a horizontal step tread (56) and an arcuate front section for securing and supporting a curved step riser (58) thereon. Since applicant has not disclosed that the bracket having a front section with an arcuate surface provides an advantage, is used for a particular purpose, or solves a stated problem, it would have been an obvious matter of design choice to a person of ordinary skill in the art at the time the invention was made to modify the front section of the bracket of Wack et al. having an arcuate surface instead of a vertical surface as taught by White for providing a step having raisers with a smooth finished exterior appearance. One of ordinary skill in the art, furthermore, would have

Art Unit: 3636

expected applicant's invention to perform equally well with an arcuate front section because it provides smooth surfaces with desirable appearance.

7. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs (US Patent No. 1,368,418) in view of White '490.

Jacobs shows and teaches a bracket used for supporting a tread on a structural member (A) that has a inclined surface such as a stairway, the bracket comprising: a single body including a top section (11) having a horizontal surface, a bottom section (1) forming an acute angle with a rear end of the top section such that the top section can be disposed substantially horizontal when the bottom section is disposed in a flush relation with the inclined structure of the structural member, a front section (10), wherein the top section, the bottom section, and the arcuate front section forming a closed loop with a closed-loop reinforcement web formed therebetween, the web having at least one aperture therethrough, and at least one bracing member (2, 6) formed at the bottom section, at least one of the bracing member (2) having at least one aperture attachment (5) for securing the bracket to the inclined structural member (A).

Although Jacobs does not define the front section being an arcuate front section as claimed, White '490 teaches an escalator having end brackets (54) for supporting steps, each of the bracket (54) including a top section for supporting a horizontal step tread (56) and an arcuate front section for securing and supporting a curved step riser (58) thereon. Since applicant has not disclosed that the bracket having a front section with an arcuate surface provides an advantage, is used for a particular purpose, or solves a stated problem, it would have been an obvious matter of design choice to a person of ordinary skill in the art at the time the invention

Art Unit: 3636

was made to modify the front section of the bracket of Jacobs having an arcuate surface instead of a vertical surface as taught by White for providing a step having raisers with a smooth finished exterior appearance. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with an arcuate front section because it provides smooth surfaces with desirable appearance.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over White '490 or Liu '425 or Wack et al. or Jacobs '418 combined with White '490 as applied to claim 11 above.

White or Liu or Wack et al. or Jacobs discloses the bracket having the bottom section forming an acute angle with respect to the top section except that neither of White nor Liu nor Wack et al. nor Jacobs address the dimensions of the angle being 45 degrees as claimed. However, all references show the acute angle being approximately 45 degree. It would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have the bracket of White or Liu or Wack et al. or Jacobs having the bottom section forming an acute angle with the top section at an angle of 45 degrees as claimed, since applicant has not disclosed that having a specific angle solves any stated problem or is for any particular purpose and it appears the bracket would perform equally well with any obtuse angle to accomplish the degree of the inclined surface of the structure member to be mounted thereon.

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liu '425 or Jacobs '418 combined with White '490 as applied to claim 11 above, and further in view of Wack et al. '917.



Liu or Jacobs combined with White do not explicitly disclose the bracket being made of what specific type of plastic, Wack et al. teach a bracket for supporting a horizontal member, the bracket being made of reinforced plastic. It would have been obvious design choice for one of ordinary skill in the art at the time the invention was made to modify the bracket of Liu or Jacobs combined with White being made of reinforced plastic as taught by Wack et al. to allow its shape to be made inexpensively and to take advantage of the reinforced plastic's having desirable properties such as having sufficient impact strength characterizes, corrosion and wear properties such as thermal expansion, and moisture absorption.. Such modification would not otherwise affect function of the device which relies on its shape and not its particular material for its function. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

### *Citations*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Saito et al. '232 and Jasinetzky '599 teach various brackets used for securing a tread to an escalator comprising a structural body including an arcuate front surface as similar to the claimed invention. Gusdorf et al. shows a molded bracket as similar to the claimed invention.

### *Response to Arguments*

11. Applicant's arguments with respect to claims 1-10 under U.S.C. 102/103, and specifically to the feature for the bracket having an arcuate front surface has been considered. This feature

Art Unit: 3636

was not specifically and previously claimed. Therefore, the argument is deemed to be moot in view of the new grounds of rejection.

In addition, in response to applicant's argument that the references do not teach the bracket used for staircase as claimed, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, new claims 11-15 only claim a "bracket" intended used for supporting a structural member. Therefore, only a bracket is treated on the merit. Newly cited references teach a "bracket" read on the claimed invention as discussed set for rejection.

***Action Is Made Final***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3636

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Winnie Yip  
Primary Examiner  
Art Unit 3636